THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.13166 of 1998
Date: 22-06-2007

Between:
The Depot Manager,
APSRTC, Sangareddi Depot,
Medak District

Petitioner

And

B.Kishan and another

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.13166 of 1998

ORDER:

1. The management of the Andhra Pradesh State Road Transport Corporation (for short the 'APSTRC') has preferred this writ petition calling in question the correctness of the Award passed by the Labour Court-II, Hyderabad in I.D.No.190 of 1993, which came to be instituted by the first respondent-workman-driver.

2. It is not in dispute that the first respondent–workman was employed with the APSTRC and that he had put in considerable length of service as such. Unfortunately, while he was driving one of the buses which is an express bus service on 25-11-1992, it got involved in an accident at Rampur village resulting in the death of one individual. Therefore, pending enquiry in the matter, the first respondent had been placed under suspension on 14-12-1992. A regular departmental enquiry was conducted and based upon the finding there at, the first respondent workman came to be removed from the service by an order passed on 05-05-1993. That gave rise to an Industrial Dispute, which was instituted by the first respondent as I.D.No.190 of 1993.

3. It is the case of the first respondent-workman all through that he had been driving the vehicle in question on the date of incident quite carefully but

however, it being an express service, it is not liable to stop at Rampur village Bus Stop. Therefore, he was not making any effort to slow down the bus. All of a sudden a pedestrian started crossing on to the road, which resulted in the accident and when he realized the same, a large crowd gathered there around and tempers started running high. Apprehending danger to himself as well as to the property of the bus, the first respondent had carried on the service and immediately proceed to Shankarampet Police Station and reported the matter there.

4. The case of the first respondent-workman is that he is not guilty of driving the vehicle rashly or negligently and the accidental death had been caused only due to the improper conduct of the pedestrian in moving on to the course of the vehicle. The first respondent-workman had also pointed out that a truck was parked on the route and therefore, the space available on the road did not leave enough room for him to negotiate the bus freely. In fact, one of the passengers in the bus had been examined before the Enquiry Officer. She had deposed that there is no negligence on the part of the first respondent-workman, which can be said to be causative factor for accident in question.

5. It will be appropriate to notice at this stage that the State has prosecuted the first respondent-workman alleging that he has caused the death of an individual due to rash and negligent driving of the bus. The prosecution launched by the State in C.C.No.214 of 1995 came to be tried by a Judicial First Class Magistrate, Andole at Jogipet. By his judgment rendered on 21-o2-1995 in C.C.No.214 of 1995, the learned Magistrate had come to the conclusion that the driver of the bus is not guilty of exhibiting any negligence and consequently acquitted him of the charge laid against him. It

is also appropriate to notice that before the Criminal Court, the wife of the deceased had been examined as PW.2, while another eye witness has been examined as PW.1. Both these witnesses have categorically deposed that express buses do not stop at Rampur village Bus Stop. But unfortunately, the deceased without realizing that the on coming bus is an express service bus of the APSTRC was trying to make a request for it's stop there. Therefore, to make his request visible to the driver of the bus, he was trying to wave his hand so that the driver will catch the signal and stop the vehicle, in this process, the accident had occasioned. Therefore, the Criminal Court had no difficulty in arriving at the conclusion that since the express buses do not stop at Rampur village Bus Stop, the driver of the bus cannot be faulted for having not slowed down the bus and it is only reasonable to expect on the part of the driver that nobody would suddenly walk into the route of the bus at such a place. In these set of circumstances, the Criminal Court had arrived at the conclusion that the driver of the bus is not liable to be held guilty of causing the death of the deceased.

6. A copy of the judgment rendered in C.C.No.214 of 1995 has been placed before the Labour Court by the first respondent-workman and it was marked as Ex.W.1. On the strength and basis of the findings recorded by the Criminal Court, the first respondent-workman could successfully persuade the Labour Court to believe that he cannot be held completely at fault for the accidental death of the deceased and on the other hand it is the deceased who has contributed to the accident. In those set of circumstances, the Labour Court had no difficulty in arriving at a conclusion that since the express buses are not required to stop at Rampur village Bus Stop, no fault can be attributed to the first respondent-workman for having not slowed down

the speed of the vehicle. The Labour Court had also no difficulty in believing that the accident in question may not have been caused entirely by the first respondent-driver. Therefore, it had exercised the discretion available with it under Section 11 A of the Industrial Disputes Act, 1947 and ordered for substitution of punishment of removal from service with that of reinstatement with all benefits including continuity of service but however, it had confined the relief of payment of back wages to 25%.

7. The learned standing counsel for the APSRTC contended that when once an accident had taken place resulting in the death of an individual, the corporation gets automatically mulcted with the responsibility and accountability of making good the loss sustained due to the death of the victim. Therefore, the Award passed by the Labour Court, in particular in ordering 25% back wages to be paid to the first respondent-workman is wholly unjust.

8. Per contra, Sri Narsimha Goud, the learned counsel for the first respondent-workman would urge that if the respondent-workman is not guilty and is not responsible entirely, for the accident, denying him substantial portion of the back wages itself is an excessive punishment.

9. It is not in dispute that even before the domestic enquiry conducted by the APSRTC one of the passengers of the bus has been examined as a witness and she has deposed that the driver of the bus namely the first respondent herein is not negligent and that the accident had been caused entirely due to the negligence of the victim, who tried to force the bus to stop at Rampur village Bus Stop and in the process came in the way of the vehicle. Coupled with this, when the judgment rendered by the Criminal Court in C.C.No.214 of 1995 is perused, it comes out that the victim had

made a vain bid to stop the vehicle not realizing that it is an express service which is not liable to stop at Rampur village Bus Stop. Therefore, the Labour Court is justified in arriving at a conclusion that the first respondent-workman cannot be wholly and solely responsible for the accident that was caused around 2.30 p.m. on 25-11-1992. In such circumstances, denying him 75% of back wages was considered as appropriate punishment. I do not find any legal infirmity in the exercise of discretion by the Labour Court in this regard.

10. I therefore, do not find this to be one of the cases which requires interference. With these reasons, the writ petition stands dismissed but however without costs.

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NOOTY RAMAMOHANA RAO,J

22-06-2007
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THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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